

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

By: James P. Jones
United States District Judge

Johnny D. Delaney filed this action on November 14, 2003, challenging the final decision of the United Mine Workers of America 1974 Pension Trust (“1974 Pension Trust”) denying his claim for a disability pension under the provisions of the

United Mine Workers of America 1974 Pension Plan (“1974 Pension Plan”). The defendants (“Trustees”) are the trustees of the 1974 Pension Trust and plan administrators and fiduciaries of the 1974 Pension Plan. Delaney’s cause of action arises under the provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C.A. §§ 1001-1461 (West 1999 & Supp. 2003) (“ERISA”), and jurisdiction of this court exists pursuant to 29 U.S.C.A. § 1132(f) (West 1999).

The defendant Trustees have filed the record of their determination of Delaney’s claim for a pension,¹ and the parties have briefed cross-motions for summary judgment based on that record, pursuant to Federal Rules of Civil Procedure 56. The case is thus ripe for decision.

II

The standard of review of a decision made by fiduciaries of an ERISA-controlled benefit plan generally is de novo. *See Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). Where the plan gives the fiduciaries discretion to determine benefit eligibility or to construe plan terms, however, the standard of review is whether the trustees abused their discretion. *See Booth v. Wal-Mart Stores*,

¹ The plaintiff’s pension file, which is kept by the Trustees and upon which they determined his claim, is hereafter referred to as “R.” The plaintiff does not dispute the authenticity or completeness of the copy of the pension file submitted to the court.

Inc. Assocs. Health & Welfare Plan, 201 F.3d 335, 342 (4th Cir. 2000). In considering the reasonableness of a fiduciary's discretionary decision, the court may consider the following factors:

(1) the language of the plan; (2) the purposes and goals of the plan; (3) the adequacy of the materials considered to make the decision and the degree to which they support it; (4) whether the fiduciary's interpretation was consistent with other provisions in the plan and with earlier interpretations of the plan; (5) whether the decisionmaking process was reasoned and principled; (6) whether the decision was consistent with the procedural and substantive requirements of ERISA; (7) any external standard relevant to the exercise of discretion; and (8) the fiduciary's motives and any conflict of interest it may have.

Id. at 342-43.

The Fourth Circuit has adopted the abuse of discretion standard of review for decisions under the 1974 Pension Plan. *See Boyd v. Trustees of the United Mine Workers Health & Retirement Funds*, 873 F.2d 57, 59 (4th Cir. 1989). In exercising their discretion under the 1974 Pension Plan, the Trustees are obligated to pay legitimate claims and to guard trust assets against improper ones. *See Sargent v. Holland*, 114 F.3d 33, 35 (4th Cir. 1997). If substantial evidence supports the Trustees' decision, then the determination must be affirmed. *See Brogan v. Holland*, 105 F.3d 158, 161 (4th Cir. 1997). "Substantial evidence . . . is evidence which a reasoning mind would accept as sufficient to support a particular conclusion." *Laws v. Celebrezze*, 368 F.2d 640, 642 (4th Cir. 1966). Such evidence consists of "more

than a mere scintilla of evidence but may be somewhat less than a preponderance.”

Id.

The 1974 Pension Plan defines the relevant eligibility requirements for a disability pension and states:

A Participant who . . . becomes totally disabled as a result of a mine accident . . . shall, upon retirement . . . be eligible for a pension while so disabled. A Participant shall be considered to be totally disabled only if by reason of such accident such Participant is subsequently determined to be eligible for Social Security Disability Insurance Benefits. . . .

1974 Pension Plan, art. IIC. (Mem. Supp. Defs.’ Mot. Summ. J. Ex. A at 5.)

Accordingly, a claimant seeking a disability pension under the 1974 Pension Plan must establish that (1) he was involved in a mine accident, (2) he has been awarded social security disability insurance (“SSDI”) benefits, and (3) the SSDI award was based on a disability caused by the mine accident. The mine accident must have “proximately caused” or be “substantially responsible” for the disability, even though it may have acted in combination with a previous or subsequent condition. *Boyd*, 873 F.2d at 59-60; *Robertson v. Connors*, 848 F.2d 472, 475 (4th Cir. 1988).

Under the deferential standard applicable to this case, the court is limited to the evidence that was before the Trustees at the time of their decision. *See Sheppard & Enoch Pratt Hosp., Inc. v. Travelers Ins. Co.*, 32 F.3d 120, 125 (4th Cir. 1994).

Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c). Where the court must decide the case on the basis of an administrative record, the summary judgment motion “stands in a somewhat unusual light, in that the administrative record provides the complete factual predicate for the court’s review.” *Krichbaum v. Kelley*, 844 F. Supp. 1107, 1110 (W.D. Va. 1994), *aff’d*, No. 94-1496, 1995 WL 449668 (4th Cir. July 31, 1995) (unpublished). Because the factual record is closed, the “plaintiff’s burden on summary judgment is not materially different from his ultimate burden on the merits.” *Id.* “To survive summary judgment, then, plaintiff must point to facts in the administrative record—or to factual failings in that record—which can support his claims under the governing legal standard.” *Id.*

III

The facts taken from the record in this case show that on April 16, 1991, Delaney, then thirty-five years old, strained his back in an accident while working in a coal mine. He continued to work until May 8, 1991, and then sought medical attention. The diagnosis was “acute low back strain.” (R. at 537.) X rays taken that day showed “mild degree of degenerated disc disease between L5-S1 vertebra and

spur formation at the lumbo-sacral junction” and “minimal deformity of the L5 vertebra shows spur formation, due to ? [sic] old trauma. No recent infury [sic] is seen.” (R. at 540-41.)

Delaney continued off from work. On June 6, 1991, he saw Neal A. Jewell, M.D., an orthopedist. After an examination and a MRI, Dr. Jewell’s diagnosis was “1. Degenerative lumbar disc disease, L-4/L-5 and L-5/S-1” and “2. Moderate disc protrusion, L-4/L-5 and L-5/S-1.” (R. at 543.) Delaney was treated conservatively by Dr. Jewell for some months and eventually released to return to light work as of June 1, 1992.

While Delaney was seeing Dr. Jewell, he was also treated by James Senter, M.D., a family physician. Delaney reported to Dr. Senter that he “does fairly good” until he “does anything strenuous.” (R. at 552.)

Delaney returned to Dr. Jewell in 1993, not having returned to work and still complaining of back pain. Dr. Jewell found that Delaney’s “subjective complaints are certainly not supported by his objective findings.” (R. at 601.)

Delaney also had psychological problems. He was treated for several years by Pierce D. Nelson, M.D., a psychiatrist, who reported on February 23, 1993, to Delaney’s attorney that Delaney had been divorced over ten years earlier after a brief marriage because he and his wife “couldn’t get along He couldn’t function

sexually, and they ended up divorced.” (R. at 570.) Dr. Nelson found that Delaney “is depressed that he can’t function to support himself and be constructive.” (*Id.*) Dr. Nelson diagnosed Delaney with “[a]nxiety neurosis, somatic conversion reaction type” and noted that the patient “is depressed, mild to moderate . . . endogenous and exogenous factors” and “has had a lot of interpersonal turmoil, and could not relate and function sexually.” (R. at 571.)

Delaney received workers’ compensation benefits until April 1, 1994, when he settled his claim for \$40,000 plus two additional years of medical treatment. He filed three SSDI claims, the first two of which were denied by the Commissioner of Social Security on April 29, 1994, and July 8, 1998, respectively. These denials were upheld by this court. *Delaney v. Health & Human Servs. Sec’y*, No. 2:94CV00139 (W.D. Va. Mar. 31, 1995); *Delaney v. Apfel*, No. 2:98CV00144 (W.D. Va. Jan. 7, 2000). Finally, on February 24, 2000, an administrative law judge found that Delaney was disabled with an effective date of March 29, 1997, the day following his last denial of benefits by an administrative law judge. The basis for the granting of benefits was “chronic back pain, calcified bursitis at the left hip, major depression and an anxiety disorder.” (R. at 64.)

On May 11, 2000, after he was awarded SSDI benefits, Delaney applied to 1974 Pension Plan for disability pension benefits. His application was initially

denied and he sought an administrative appeal. By letter dated July 9, 2002, Delaney was advised that his appeal had been denied. The denial was based on a written recommendation by Marilyn S. Dyson, R.N., an employee of the 1974 Pension Plan. After a lengthy recitation of the facts, Dyson concluded that there was inadequate evidence of a causal link between Delaney's 1991 mine accident and the disability grounds determined in his SSDI award. She found that his back condition was due to degenerative disc disease, a progressive condition not covered under the 1974 Pension Plan, and that his mental impairments were caused either by his family situation or as a result of the degenerative disc disease. This action followed, in which Delaney seeks a judgment directing the Trustees to award him a disability pension.

IV

As noted by the Fourth Circuit in its recent opinion in *McCoy v. Holland*, No. 03-1223, 2004 WL 758385 (4th Cir. Apr. 9, 2004), I am not permitted to engage in a de novo review of the Trustees' disability decision under the 1974 Pension Plan. *See McCoy*, 2004 WL 758385, at *3-*4. "If the medical evidence is unclear, the Plan grants the Trustees, not the court, the discretion to resolve any conflicts and draw reasonable inferences from the record." *Id.* at *4. The fact that the record here may

have supported a finding in favor of the claimant does not entitle me to substitute my judgment for that of the Trustees.

Based on a reasonable interpretation of the 1974 Pension Plan by the Trustees, it is established that “degenerative disc disease cannot be proximately caused by a mine injury for purposes of the UMWA 1974 Pension Plan.” *Id.* There is substantial evidence in the record to support a finding that Delaney’s chronic back pain was caused by this disease. Among other things, the analysis for the Trustees noted that: (1) Delaney’s disability was not established until 1997, six years after the mine accident and after fourteen years of strenuous manual labor; (2) diagnostic studies showed that Delaney suffered from degenerative disc disease; and (3) his initial diagnosis following the mine accident was back strain, a condition which improved until exacerbated by activity. Moreover, as noted, there was ample evidence that Delaney’s depression and anxiety had its roots in family difficulties, financial problems, and pain caused by the disc disease.

Based on these facts, I cannot say that the Trustees’ decision was arbitrary and not based on substantial evidence.

V

For the foregoing reasons, the defendants' motion for summary judgment will be granted and final judgment entered in their favor.

DATED: April 22, 2004

/s/ JAMES P. JONES
United States District Judge